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HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7554 OF 2007.

M/s. MRM Associates. ..Petitioners.

V E R S U S

The State of Maharashtra & Others. ..Respondents.

Mr. S. G. Surana for the petitioner.

Mr. R. Varma i/b M/s. Navdeep Vora and Associates for the respondent no.2.

Mr. S. R. Nargolkar A.G.P. for the State - respondent no.1.

CORAM: S.B.MHASE & D.G.KARNIK,JJ.

DATE : OCTOBER 12, 2007.

P.C.

1. By this petition, the petitioner challenges the communication dated 8th June 2007 sent by the respondent no.2 Maharashtra Industrial Development Corporation Ltd rejecting permission for change of user of the land from "residential" to "residential and commercial".

2. The petitioner contends that as per the conditions in the original tender document the use of the premises was permitted for the commercial and residential purposes, and therefore the petitioner is

entitled to use the land for construction of a building which can be used for residential as well as commercial purposes. He also invited our attention to the clarification sought by Navi Mumbai Municipal Corporation, which is the planning authority, from the State Government whether the commercial use could be permitted in respect of the residential plots. According to the petitioner the government has informed to the Navi Mumbai Municipal Corporation that permission can be granted for the residential cum commercial purposes in respect of such lands. Counsel, therefore, submitted that in view of the specific permission granted by the government to the planning authority to permit residential and commercial use in respect of residential plots, the petitioner is entitled to use the plot for commercial purpose.

3. After the tender, the agreement to lease was signed between the petitioner and respondent no.2 - MIDC. As per the condition no.5 of the said agreement to lease the petitioner is permitted to use the land only for the residential purpose and cannot use the plot for the construction of a building which is to be used for composite purpose of residence and commercial. In our opinion, the tender document is only an invitation to offer. After the tender process, a

contract was entered into between the parties on 24th March 2005. It is styled as an agreement to lease. Rights are crystalised and governed by the said agreement to lease. Pre-contractual negotiations cannot have any bearing on the interpretation of the written agreement; the meaning of which is clear and unambiguous. In fact the petitioner himself accepted that as per the contract the plot can be used only for the residential purpose, and therefore, by an application dated 1/2/2007, he asked for the permission for change of user from residential to residential cum commercial. Thus not only as per the terms of contract the plot would be used for the residential purposes only, but the parties understood that the plot is to be used for the residential purpose only.

4. As regards the contention that the government has granted permission to the Planning authority to sanction the building plans for the residential cum commercial purpose, that is applicable only for the freehold plots. Contractual obligations between the parties are binding, irrespective of the fact that the government permits composite use in a particular area of locality. The question of planning authority granting permission for commercial use would arise only if the contract of lease permits leasee to

use the land for the residential cum commercial purposes. Since the contract of lease does not permit the use of plot for the commercial purpose, the petitioner is not entitled to use the land for the commercial purpose contrary to the terms of the contract. The contractual terms are binding between the parties and cannot be modified by the government.

5. We may also note that under the Maharashtra Regional Town Planning Act, 1966, MIDC is the Special Planning Authority and where the Special Planning Authority is established the general planning authority ceases to have jurisdiction for building construction and the building activity will be governed by the rules and regulations of the Special Planning Authority. For these reasons it is immaterial whether the Navi Mumbai Municipal Corporation permits the use of land for residential cum commercial purposes. Special Planning Authority has not granted permission for change of user from residential to residential cum commercial. In the circumstances, commercial use is not permitted.

6. For these reasons there is no merit in the petition. Petition is rejected summarily.

(D.G.KARNIK, J.) (S.B.MHASE, J.)